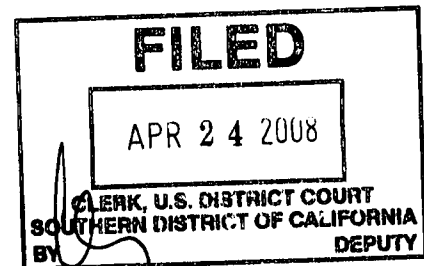


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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

08 CR1321-WQH

11 UNITED STATES OF AMERICA,

Magistrate Case No. 08MJ1107

12 Plaintiff,

13 v.

STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON

14 MARK ESQUIBEL,

15 Defendant.

(Pre-Indictment Fast-Track Program)

16
17 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
19 Douglas Keehn, Assistant United States Attorney, and defendant MARK ESQUIBEL, by and
20 through and with the advice and consent of defense counsel, Charles L. Rees, that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
25 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.
26 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

27 //

28 WDK:psd:4/14/08

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1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before May 12, 2008.

6 4. The material witness, Lucia Alejo-Diaz, in this case:

7 a. Is an alien with no lawful right to enter or remain in the United States;
8 b. Entered or attempted to enter the United States illegally on or about
9 April 9, 2008;

10 c. Was found in a vehicle driven by defendant at the San Ysidro, California Port
11 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that she was an
12 alien with no lawful right to enter or remain in the United States;

13 d. Was paying \$4,000 to others to be brought into the United States illegally
14 and/or transported illegally to her destination therein; and,

15 e. May be released and remanded immediately to the Department of Homeland
16 Security for return to her country of origin.

17 5. After the material witnesses are ordered released by the Court pursuant to this
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
22 substantive evidence;

23 b. The United States may elicit hearsay testimony from arresting agents
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
26 of (an) unavailable witness(es); and,

27 //

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Mark Esquibel

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
7 further that defendant has discussed the terms of this stipulation and joint motion with defense
8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
10 immediate release and remand of the above-named material witness(es) to the Department of
11 Homeland Security for return to her country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT
15 United States Attorney

16 Dated: 4/24/08

17 for Michelle M. Freed
18 DOUGLAS KEEHN
19 Assistant United States Attorney

20 Dated: 4.23.08

21 Charles L. Rees
22 CHARLES L. REES
23 Defense Counsel for ESQUIBEL

24 Dated: 4.23.08

25 Mark Esquibel
26 MARK ESQUIBEL
27 Defendant

28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Mark Esquibel

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to her country of origin.

SO ORDERED.

Dated: 4/24/2008


United States Magistrate Judge